

## APPEAL NO. 93025

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp. 1992). On December 11, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) determining that appellant, claimant herein, was not injured when another employee fell over an extended file cabinet drawer. Claimant asserts that the tripped employee made contact with, and injured, claimant on his way to the floor and that evidence existed showing claimant was pushed down upon the open drawer. Respondent, carrier herein, states that there is sufficient evidence to support the decision.

## DECISION

Finding that the decision and order of the hearing officer are sufficiently supported by evidence of record, we affirm.

Claimant was employed by a temporary employment service but was on assignment to a business where she worked as a file clerk. She was in the act of filing papers into existing files contained in the bottom drawer of a four-drawer file cabinet when another employee approached at a hurried pace. The employee was not focusing his attention upon the fully extended open file drawer or upon the claimant who was squatting on the side of it away from him. The employee struck the open drawer closer to its extended end than to the file cabinet from whence it came. He fell; whether he struck and injured the claimant while falling forms the dispute in this case.

The employee who fell, VV, testified that when he struck the file cabinet, he saw claimant on the other side. As he fell forward, he turned his body away from the file cabinet and fell on his back approximately one and one-half feet in front of the extended drawer. He at first opined that he possibly touched claimant with the fingers of one hand, but later acknowledged that he does recall touching, with a brushing motion, claimant's back with his fingers. He testified that he did not fall on claimant and did not strike claimant. Another employee, MB, was seated at her desk nearby with an unobstructed view separating copies of documents, which allowed her to observe proceedings around her. She heard VV approaching rapidly and looked at him just before his leg hit the extended drawer. She saw him falling forward and turning to the side to land on his back. She saw no striking by VV of claimant. She at most would agree that at some point a part of VV's arm or leg was not within her sight, and it was possible for either to have touched claimant. She maintained that VV's body did not fall on or strike claimant and that claimant was not knocked down or off balance in any way--claimant maintained her squatting position. Another employee's statement, BG, was introduced which corroborated the testimony of VV and MB. Specifically, BG mentioned that VV, after tripping, "pivoted or turned to avoid (claimant)."

Claimant testified that as she was squatting by the open file drawer, VV struck the drawer and his "complete body" fell on her, striking her neck, shoulders, and upper back first, then he rolled down to her lower back and thence to the floor. She said that his fall

upon her forced her against the file drawer, but she was not dislodged from her squatting position. After inquiring of VV's health, she continued working until the end of the week when she went to (Dr. A) who stated that she was injured on (date of injury), the day she saw him. He diagnosed cervical myofascitis, subluxation of the cervical spine, intervertebral disc disorder, neck pain, cervical sprain, torticollis, subluxation of thoracic vertebra, and thoracic sprain. The x-rays showed "no evidence of acute bony injury or vertebral body compression." Claimant testified that she still had pain, she still needs treatment, and she has only been able to work a short time since her injury.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Article 8308-6.34(e) of the 1989 Act. He could give significant weight to the testimony of VV and MB, along with the statement of BG, all of which contradicted much of claimant's testimony. See Ashcraft v. United Supermarkets, Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). He could also give significant weight to the testimony of all witnesses, including claimant, that claimant was not pushed from her squatting position; he could consider this fact in weighing claimant's testimony that VV's "complete body" fell on her. He could believe VV when he said that only his fingers brushed the claimant as he fell.

The findings and conclusions are sufficiently supported by the evidence. The decision and order are sufficiently supported by the findings and conclusions and by the evidence and are affirmed.

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Joe Sebesta  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge